



Calhoun: The NPS Institutional Archive

Reports and Technical Reports

Graduate School of Business and Public Policy (NPS-GSBPP)

2007

Civil Service Reform as National Security: The Homeland Security Act of 2002 (Administrative Case Study)

Brook, Douglas A.



Calhoun is a project of the Dudley Knox Library at NPS, furthering the precepts and goals of open government and government transparency. All information contained herein has been approved for release by the NPS Public Affairs Officer.

Dudley Knox Library / Naval Postgraduate School
411 Dyer Road / 1 University Circle
Monterey, California USA 93943

<http://www.nps.edu/library>

Civil Service Reform as National Security: The Homeland Security Act of 2002

Administrative Case Study

The events of 9/11 have influenced policy making in public administration. The Homeland Security Act of 2002, which created the Department of Homeland Security, contained language that empowered the secretary of homeland security and the director of the Office of Personnel Management to establish a personnel management system outside the normal provisions of the federal civil service. Why did civil service reform succeed as part of this legislation when previous attempts at large-scale reform had failed? A case analysis of the enactment of civil service reform in the Homeland Security Act points to theories of policy emergence and certain models of presidential and congressional policy making. In this case, civil service reform became associated with national security instead of management reform. An assessment of the rhetorical arguments used to frame this policy image offers a powerful explanation for the adoption of the personnel management reforms in the Homeland Security Act. This case has implications for understanding how policy makers might approach future management reform agendas.

The events of September 11, 2001, changed the context, priorities, and goals of public sector management reform. Moynihan and Roberts, for example, ask how 9/11 “reshaped perceptions about the role of government and the goals of public sector reform” (2002, 130–31). One series of events that illustrates the impact of 9/11 on public sector management reform is the enactment of the personnel management provisions of the Homeland Security Act of 2002 (HSA).

The HSA created the Department of Homeland Security (DHS) by combining 22 existing agencies and 170,000 federal employees into a new cabinet-level department—the largest and most complex reorganization of the federal government since the Department of Defense was created nearly six decades earlier. The legislation gave the DHS authority to initiate new approaches to personnel management outside the normal rules of the federal civil service. This new personnel management authority was potentially the

broadest and most significant change in civil service law since the Civil Service Reform Act of 1978.

The personnel management provision of the HSA was perhaps the most contentious aspect of the proposed law, tying up final passage of the legislation until after the 2002 midterm elections and pitting the administration and major federal employee unions against one another in a hard-fought battle for support on Capitol Hill. Why did civil service reform succeed as part of the Homeland Security Act when other attempts at broad reform had failed? How did the events of 9/11 affect this outcome? These questions are examined through an analytical case study of the enactment of the personnel management reforms in the HSA. This analysis helps to explain how and why a significant administrative policy change took place, and the research suggests implications for understanding policy making for future management reform agendas.

Examining the Policy Environment and Legislative Decision Making

In examining the case of personnel management policy making in the HSA, both the policy environment and the emergence of policy proposals provide important frames to understand how the legislation came to pass. Additionally, the role of communication and rhetoric likely played a key role in how the arguments were received.

Policy Environments and the Emergence of Policy Proposals

Policy environments can be viewed as stable, characterized by policy subsystems and open only to incremental change. Baumgartner and Jones (1993), however, present a model of policy change in which the apparent long-term policy equilibrium is not changed incrementally but is punctuated by brief periods of large-scale change. Change occurs when the existing policy equilibrium is disrupted because new policy makers and institutions enter the debate, policy subsystems cede exclusive claims to the issue, policy

Douglas A. Brook is a professor of public policy and director of the Center for Defense Management Reform in the Graduate School of Business and Public Policy, Naval Postgraduate School. He served as assistant secretary of the army (financial management) and as acting director of the U.S. Office of Personnel Management in the administration of President George H. W. Bush. He holds a doctorate in public policy from George Mason University.
E-mail: dabrook@nps.edu

Cynthia L. King is an assistant professor of management communication in the Graduate School of Business and Public Policy, Naval Postgraduate School. She studies the interaction between language and influence in public and private organizations. She has held positions in operations and sales management in high-tech consulting firms in Seattle, Washington. Dr. King holds a doctorate in communications from the University of Washington.
E-mail: cking@nps.edu

images and venues change, and the policy debate moves from a micropolitical into a macropolitical environment in which it is associated with larger issues or considered by a wider set of policy makers. In the macropolitical environment, rhetoric can be particularly influential in upsetting the status quo. Rhetoric, for the purposes of this essay, may be defined as “the use of words by human agents to form attitudes or induce actions in other human agents” (Burke 1950, 41).

Kingdon asserts that policy agendas emerge and move ahead when “policy windows” open: “Policy windows, the opportunities for action on given initiatives, present themselves and stay open for only short periods” (1995, 166). Policy windows can open when there is a change in administration, a turnover of political actors, or a shift in national mood, or when a problem becomes pressing (168–69). Moynihan sees the enactment of the Homeland Security Act as one of those limited and temporary instances in which dramatic policy change was accomplished. In this case, Moynihan notes, “the White House had to overcome a highly stable policy subsystem, characterized by the power of the public service unions. . . . [M]oving the issue to the macropolitical arena, and changing the issue image and policy venue are methods to create disequilibrium in the public management subsystem” (2005, 192).

A case analysis of the passage of the Homeland Security Act conforms to these general theories of policy emergence and policy change. Moreover, an examination of the communication surrounding the issue helps to explain how, when the issue moved to the macropolitical environment, changes in rhetorical strategies serve as a powerful explanation for the outcome. Reviews of documentary evidence and interviews with key individuals involved in the issue provide the data on which this case analysis is based.

Background

The history of the U.S. federal civil service can be viewed as comprising four rather distinct periods that suggest a long-term pattern of punctuated policy equilibrium. The first century of the new republic can be seen as the era of the “spoils system.” The second period covers the time of the Pendleton Civil Service Act, 1883–1978. The third period is that of the Civil Service Reform Act, from 1978 to the current era. Finally, the fourth period, which was mostly incremental reform, began sometime in the 1990s, around the twentieth anniversary of the Civil Service Reform Act.

The idea of large-scale change in civil service law did not spring *de novo* into the policy debates in 2002. Successive administrations from Ronald Reagan to George W. Bush had made broad legislative proposals

to change federal personnel management but had to settle for more incremental, smaller-scale change as Congress declined to act on broad personnel management reform legislation.

The George W. Bush administration had a personnel management policy agenda as a part of the President’s Management Agenda, a comprehensive program to identify management reforms and improve government performance in five key areas. One of the priority areas was the strategic management of human capital. According to Richard Falkenrath (2005), special assistant to the president and senior director for policy and plans in the Office of Homeland Security,

The President had a management agenda pre-9/11 and it wasn’t getting any traction. The President’s Management Agenda . . . basically wanted to improve the quality of management in the federal executive branch. The hallmarks of [the President’s Management Agenda] were: less congressional micromanagement, greater or broader statutory mandates, larger appropriations accounts, and executive discretion to hire and fire and control the departments. The philosophical essence of the President’s Management Agenda was basically to treat department and agency heads like CEOs, and let them control their agencies.

The administration had developed its policy agenda but was having trouble advancing it. There was a policy-in-waiting. A window of opportunity had not yet appeared.

The Homeland Security Act of 2002

The events of 9/11 opened a policy window. The birth of the DHS can be viewed as a rare opportunity for President Bush to leverage the momentum behind homeland security to implement personnel reform, perhaps even extending it throughout the entire federal government (Ryan 2003, 103).

Soon after 9/11, the White House established the Office of Homeland Security in the Executive Office of the President. Pennsylvania governor Tom Ridge was appointed the president’s senior advisor for homeland security. But even before 9/11, some in Congress had been pushing for the creation of a cabinet-level Department of Homeland Defense—chief among them Senator Joseph Lieberman, chairman of the Senate Government Affairs Committee. The administration had initially rejected the idea of a new cabinet department, but faced with increasing pressure from Capitol Hill, the administration set about to draft a proposal for a homeland security department. A small group of five White House staff members, overseen by a senior-level group, was charged with designing the

new department. They worked in secret in the President's Emergency Operations Center.

Drafting the Legislation

On June 6, 2002, the White House announced its proposal for a new Department of Homeland Security. Management flexibility was addressed only in general terms at the time of the announcement. Briefing the press as a "senior administration official," Homeland Security Advisor Ridge said, "It is our hope . . . that as we send specific legislation to the Hill that this new cabinet secretary . . . will be given the freedom to manage; i.e., we'd like to see some flexibility . . . so that they can move people and resources around in times of crisis or emergency. I think that's critical" (White House 2006).

The merger of 22 agencies posed large integration challenges in personnel management. The entities to be merged into the DHS consisted of 17 different unions, 77 existing collective bargaining agreements, 22 human resources servicing offices, and eight payroll systems. For some, the mere act of merging disparate entities with detailed agency-specific personnel management policies into a new department necessitated a new system of personnel management. Others argued that it was the urgent nature of the DHS mission that called for new approaches to personnel management. Representative Rob Portman (2002), then a member of the House Select Committee on Homeland Security and now director of the Office of Management and Budget, said, "It's absolutely critical, if this department is going to work, that the President be able to take the 22 different personnel systems . . . and meld them together in a way that we . . . make an effective agency to combat terrorism. The agility of the terrorist needs to be matched by a more agile federal workforce." One member of the White House staff group said,

It wasn't a big debate. This represents an opportunity to change the way federal civil service is wrought. And we need to do that; it's in desperate need of reform. There was nobody there that didn't think it was in desperate need of reform. So, to that extent, the decision to do it was very easy and not contentious. I don't want to say the decision was made lightly, but I don't think it was ever a debate. (Lawlor 2005)

The Republican leadership on Capitol Hill asked for draft legislation quickly, and the White House staff group worked with the Office of Personnel Management (OPM) and others to draft the legislation. According to Brad Berenson (2005), who chaired the drafting team,

[I] put together a legislative drafting team. This group sub-delegated some of the drafting work

to the OMB [Office of Management and Budget] for contracting issues and OPM for the personnel provisions. I was put in charge of the process for writing the legislation. This would be the first time the president had sent actual bill language to Congress because all previous proposals had been outlines or concepts. . . . We worked around the clock. So, we didn't have a lot of time to tinker with what we received from OMB and OPM. We might have kicked the tires a little, but we basically just dropped their work into the bill.

The legislation contained language that gave the DHS secretary and OPM director authority to institute new personnel management rules "notwithstanding" the provisions of Title 5. Section (a), the heart of the personnel management provision of the proposed bill, contained just 68 words:

Notwithstanding any other provision of this title [Title 5], the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security, which shall be flexible, contemporary, and grounded in the public employment principles of merit and fitness.

Section (b) required simply that any new system be "flexible and "contemporary," preserve the principles of merit and fitness, maintain equal employment and other employee rights and remedies, and ensure the right to organize and bargain collectively and made certain pay provisions nonwaivable. This section also contained a five-year sunset provision on the authority to issue new regulations.

This provision of the HSA introduced the most dramatic potential shift in the direction of federal personnel management since the Civil Service Reform Act. Writing in general language to empower the DHS secretary and OPM director to establish new personnel management practices avoided time-consuming debate over the details of any such plan. OPM director Kay Cole James (2005) explained, "Our initial take at this was, 'Let's make the legislation as broad as possible so that we could have the freedom to fill in the details as we went along.'" The administration's bill, H.R. 5005, was introduced in the House on June 24, 2002, with expectations that it would pass quickly.

Opposition Emerges

The first signs that the bill's personnel management language might cause political problems emerged

quickly. Those key words—“notwithstanding any other provision”—immediately triggered a problem. As Richard Falkenrath (2005), a member of the staff group said,

We had no idea what we were “notwithstanding.” Title 5 is a big title. It turns out Title 5 contains whistleblower protections. So, within two days the unions are putting out a press release that says the president wants to end whistleblower protections. Well, that’s nonsense. We don’t want to end whistleblower protections. We wanted to give the secretary the authority to write new regulations for the personnel system, notwithstanding what had come before.

Union opposition was quick in coming. The American Federation of Government Employees (AFGE) and the National Treasury Employees Union (NTEU) asserted that the personnel management proposal threatened collective bargaining agreements and eliminated protections for federal workers. Still smarting from President Bush’s earlier revocation of Clinton-era labor partnerships, union leaders saw the HSA personnel provisions as just one more piece of evidence that the Bush administration was out to break the unions. In labor’s view, the administration wanted to “eliminate collective bargaining rights . . . and exercise unchecked power over federal workers” (AFL-CIO 2002). The fight over the DHS bill became, in large part, a fight over personnel management rules. The struggle over the personnel reform portion of the HSA led to delayed action in the Senate up to the midterm elections of 2002.

Congressional Consideration

Congressional action began in the House and Senate almost simultaneously, but on different legislative proposals. In the Senate, the Government Affairs Committee voted favorably on the Lieberman bill out of committee on June 24, 2002—the same day the administration’s bill, H.R. 5005, was introduced in the House. In the House, Speaker Dennis Hastert parceled out portions of the bill to all of the committees of jurisdiction but appointed a nine-member Select Committee on Homeland Security, chaired by majority leader Dick Armey, to coordinate the House legislative process on this legislation.

The Senate committee moved first on the Lieberman bill, but the House was quicker to move on the administration’s bill. Hearings and markup sessions went on immediately in all of the committees, and all discharged their bills on July 12, 2002. Once the House committees reported their markups, the select committee acted quickly to bring a bill to the floor. The bill provided the DHS secretary with greater management flexibility in the areas of performance appraisal, job classification, pay rates and systems,

labor management systems, and adverse actions and appeals. It also provided civil rights and disabled protections, preserved veterans’ preferences in hiring, and ensured that the Fair Labor Standards Act, Social Security Act, and Family and Medical Leave Act would continue to apply to federal employment. Finally, the bill also preserved workers’ right to organize, but it continued the president’s authority to limit collective bargaining for national security reasons and extended this authority to the secretary of homeland security (U.S. House 2002, 2–3).

The House took up the bill on July 26. Six amendments were defeated on close party-line votes. The House passed the bill on a vote of 295–132.

The bill then moved to the Senate, where two cloture motions were made to try to bring a bill to the floor. Both were withdrawn, and Senate majority leader Tom Daschle announced that a vote on the bill would be put off until after the August recess. The real fight over the bill would take place in the Senate. When the Senate returned to Washington after the summer recess, the bill was brought to the floor for consideration on 12 days between September 4 and September 25 before it was returned to committee. As the debate raged on and off the Senate floor, it became more political and more partisan.

Tom Ridge and Kay Cole James asserted that they were open to working with the unions. Ridge (2006) explained, “We spent a lot of time assuring them [legislators] that we would engage with the unions, and we did seriously consider many of their objections and recommendations.” Ridge and James also claimed that they were willing to make deals and concessions to get the bill passed. According to James (2005), “We were willing to put a lot on the table. At first I don’t know if they really believed we had the authority to do that and could deliver. But we did.” Colleen Kelly (2005), NTEU president, described these interactions somewhat differently: “Any time I requested a meeting, we got a meeting. . . . [T]he issue was just that very often the conversation . . . would seem to me was going very well . . . and then we would leave the room, and they would go right back to where they started from.” The NTEU’s Maureen Gilman (2005) said, “We were working . . . to get a compromise. We were willing to give up virtually anything, . . . but as they got closer to the election they wanted this political issue. They did not want a compromise.”

No compromise was reached, and the issue remained undecided as Congress headed into the November elections.

The November Elections

There were clear differences between the administration and the unions on issues that were important to

both. Each side also had a different perception of what the fight was all about. For the administration, the issue was management flexibility to fix a broken personnel management system. For the unions, the issue was collective bargaining agreements and the rights of organized workers. A central issue in the fight became the existing law that gave the president authority to abrogate union agreements on national security grounds. The unions wanted to limit this authority in the HSA, whereas the administration sought to preserve and perhaps even extend it. Efforts to amend the president's authority failed, but they fueled the debate that was being framed as national security versus labor rights.

The campaigns of two Senate Democrats, Jean Carnahan (Missouri) and Max Cleland (Georgia), were affected by this debate (Moynihan 2005). Campaign ads portrayed Senator Cleland, a triple-amputee Vietnam War veteran, as anti-national security and pro-special interest (Lowry 2004). President Bush visited Missouri several times in October and November to lend support to Representative Jim Talent's senatorial bid against incumbent Jean Carnahan, arguing at one campaign stop that "Jim Talent understands what I'm talking about. You put him in the Senate; we'll get us a good homeland security bill, which will make it easier for presidents to protect America" (Bush 2002). Colleen Kelly (2005), president of the NTEU, reflected, "They framed those who were in the Democratic Party [as] supporting us, and even the one or two Republicans or Independents who were on our side—to keep this thing alive—they framed them as unpatriotic." *Washington Post* columnist Stephen Barr (2005) observed, "The defeat of Max Cleland, a Vietnam war veteran who said that labor rights and employee rights should not be changed and who then goes down in defeat in his home state, left Democrats very embittered on this front."

When the results of the midterm elections were in, the administration had gained a Republican majority in the Senate and enough support to pass H.R. 5005 with the personnel management flexibilities provision intact. The election results were broadly interpreted as a national judgment on Bush's stand on homeland security (Conley 2002). Passage of the HSA did not even have to wait for a new Congress to be seated in January. Instead, Congress returned for a rare post-election "lame duck" session to take up the HSA. OPM legislative director John Gartland (2005) explained, "It [the elections] sent a message back here. A bunch of other Democrats and Republicans, they quickly got along, and they passed that bill. 'Get it out of here! Look at what happened to Cleland and others.'" Colleen Kelly (2005), president of the NTEU, also credited the election results for passage of the bill:

Well, in the end it went through because of the midterm elections. I like to think we'd still be fighting about it even if it was a very narrow margin keeping the debate alive. So, the only reason it ended was because of the results of the midterm election. And seeing people like Max Cleland being portrayed as unpatriotic because he supported the rights of the employees who provide the protection on the front lines every-day. I'll never forget those midterm elections. I knew that night what was going to happen. And it did. You know, within two weeks they acted on the legislation.

Final Passage

After the elections, the House language was inserted into the Senate bill, and last-minute compromises were reached on some key issues. A final deal with key senators provided that the DHS would collaborate with unions before any rule changes and that the president would notify Congress and wait 10 days before waiving union agreements for national security reasons. Such waivers would be limited to a four-year period.

The final language on personnel management amounted to considerably more than the original proposal, though the broad grant of authority to make new personnel management rules was preserved. Title VII, subtitle G, section 761 added a new chapter 97 to Title 5 for the management of personnel in the DHS. It included the broader language of the House bill as amended in the Senate. In addition, a significant amendment, championed by Senator George Voinovich and incorporated as Title XIII of the HSA, established new chief human capital officers throughout the agencies of the federal government. It also set new requirements for the OPM to establish systems, standards, and metrics for assessing the management of human capital. Though managerial in its focus, the chief human capital officer provision can be viewed as an additional civil service reform, applicable government-wide, accomplished through the vehicle of the HSA.

On the Senate floor, the final HSA language was proposed by Senator Fred Thompson. In a last-ditch effort to block the bill, Senator Lieberman proposed an amendment to create instead a National Commission on Terrorist Attacks upon the United States. A cloture vote was passed 65–29 to limit debate and permit the vote. The HSA passed the Senate 90–9 on November 19. The House subsequently passed it on November 22. President Bush signed Public Law 107-269 on November 25, 2002.

Policy Change and Rhetorical Framing

Prior to the enactment of the HSA, recent administrations had to settle for incremental change in federal

personnel management. Why did broad policy change succeed in 2002 when other recent attempts at large-scale reform had failed?

This case study demonstrates that personnel management reform associated with homeland security conforms to the theories of policy emergence and policy change offered by Kingdon (1995) and Baumgartner and Jones (1993), as well as the force of rhetoric described by Burke (1950). The personnel provisions of H.R. 5005 provide an example of punctuated equilibrium: an extended period of stability and incremental change that gave way to a brief period of large-scale change. Reform overcame a strong policy subsystem through a change in the policy venue and a change in the policy image. The policy image changed when personnel management reform became associated with national security. The policy venue changed first when the legislation came under the control of a select committee in the House rather than the usual committees of jurisdiction and, ultimately, when the issue moved into a macropolitical environment in which the normal policy subsystem could not dominate.

But the most powerful explanation for the outcome rests with the argument that the personnel management policy was created and made relevant by the events of 9/11 and the rhetoric of national security. Of all the arguments made in favor of this and past reform attempts, “national security” is the only argument that was unique to the reform proposal following 9/11. Reform proponents built on the national security argument in many ways; for example, the administration argued repeatedly that the need for management flexibility was directly related to the ability to protect the American people in times of crisis or terrorist threats. Past reform arguments were similarly resurrected as being connected with the national security effort, and consequently, the rhetorical theme of 9/11 was brought into the debate, changing the stakes of the potential outcome of the legislation. The unions and reform opponents were forced into a defensive position on issues of national security, having to argue that the current system was sufficient to deal with personnel matters in the event of another national security crisis. Beyond this defensive position, they continued to argue on behalf of collective bargaining rights, an argument that had been successful in the past. However, what this case demonstrates is the immense impact of 9/11, even on issues that had never before been associated with national security. Ultimately, the administration was able to leverage the rhetorical force of that tragic event to accomplish what previous administrations had failed to do.

Implications and Lessons Learned

Since at least the 20th anniversary of the Civil Service Reform Act, many who deal in civil service policy

believed that a new round of reform was needed, but achieving reform had proven difficult. Even many limited attempts at legislation by recent administrations had failed. This time, it was different. This case study suggests some implications for the continuation of current personnel management reform efforts and some lessons for future administrative reform agendas.

Salient Argumentation

One powerful lesson is the importance of framing the debate about administrative reform in salient terms for an audience beyond the usual policy subsystem. Simply stated, the supporters of reform presented their arguments in terms of national security, and their opponents argued in terms of collective bargaining rights. A debate framed as “national security versus union special interests” is quite different from one that might have been framed as “management flexibility versus workers rights,” for instance, or a debate mired in the details of civil service law. In the post-9/11 policy environment, national security was a political trump card, certainly. However, perhaps more important to the passage of this legislation was the association of administrative reform with a higher-level policy issue. This rhetorical move may have been responsible for gaining public, political, and congressional support for reform because the argument capitalized on broader policy preferences for enhancing national security.

Timing and Opportunity

Administrative reform emerges and is successfully enacted when the timing is right and opportunity is recognized. Otherwise, the imperative for change can be lost to other more pressing priorities. As Bruce Lawlor (2005) expressed it, “I don’t think you’d see any kind of civil service reform if it wasn’t in the context of this bill. Washington just doesn’t move except in times of crisis. . . . This gave them the momentum that they needed to try to reform the system.” It is hard to imagine something like personnel management reform otherwise igniting the political passions seen in this case.

Use the Experts—Or Not?

The HSA proposal was drafted in secret by a small group of staff in the White House. It was not coordinated with the affected departments or agencies. This process proved successful in getting a policy proposal done in a timely manner, without having to deal with resistance. But it also meant that the complex details of personnel policy went unaddressed. The staff group lacked expertise in civil service laws and rules, so when it came time for the proposal to be put into legislative language, experts from the OPM had to be consulted, but with little time for detailed work. The bill was written in very general terms. The less detail there was in the bill, proponents believed, the less there would be to debate, argue, and amend. On the other hand,

the paucity of detail paved the way for critiques by the opposition. Some of these critiques proved legally valid, and the unions won some key concessions in federal court (Barr 2006a).

Seeking Compromise and Consensus

This case shows that attempts at compromise and consultation, whether genuine or not, failed to produce consensus. Additionally, the successful legal challenges mounted by the public sector unions have interfered with the successful implementation of personnel management reform at both the DHS and the Department of Defense. Issues that were not resolved in the policy-making process had to be fought after enactment in the context of legal challenges and regulation writing. The price of secrecy, generality, and dissensus in the design and enactment phases may well have been delay and discord during the implementation phase. When questions of politics and policy are not addressed prior to enactment, they must be addressed afterward.

Conclusion

Civil service reform in the context of the HSA provides a useful example of public administration policy making in a macropolitical context. It has important implications for understanding how policy making can transcend the narrow public administration policy domain and suggests that strategies for future management reforms might well include considerations for rhetorical framing and the relationship of reform to broader issues of public concern.

Epilogue

The passage of the HSA in December of 2002 did not end the fight over a new personnel management system for the DHS. Instead, the fight shifted to legal challenges over the regulations for implementing the new personnel rules.

Less than a year after the HSA was enacted, the OPM's design team completed its work and presented a report with 52 design options to top OPM and DHS officials. The design team had held 10 open town hall meetings and focus groups with employees and union representatives. OPM director Kay Cole James stated, "This process is a model for how management and labor can work together with mutual respect even though there may be real policy differences" (OPM 2003). The General Accounting Office (GAO, now the Government Accountability Office) analyzed the process used to design the new system and found that the OPM's effort "generally reflects important elements of effective transformations" (GAO 2003). The GAO also recommended that the DHS "ensure that the communication strategy used to support the human capital system maximizes opportunities for employee involvement."

Writing the proposed regulations took nearly 15 months. On January 26, 2005, DHS secretary Tom Ridge announced the new regulations. According to Ridge, the new regulations were better designed to "both attract and maintain a quality workforce" compared to the old General Schedule system, as well as to provide the necessary management flexibility needed for national security. As Ridge put it, there are "many occasions where we have to move people around quickly, [and] we don't have the latitude to sit down and discuss it or bargain" (Zeller 2005). Union leaders responded immediately, charging that the new personnel system violated the intent of the HSA with regard to collective bargaining rights. In addition, AFGE president John Gage asserted that the new rules would "encourage management [by] coercion and intimidation" and called it "a scam to reduce overall federal pay" (Zeller 2005).

The following day, January 27, 2005, the unions filed suit to prevent the implementation of the first phase of the new personnel system, asking the federal district court to issue an injunction against the final rules (Pear 2005a). On August 12, 2005, three days before the new rules were to take effect, Judge Rosemary M. Collyer issued two rulings: first, that the new personnel rules did not ensure collective bargaining as required by the law that created the department, and second, that they did not provide fair treatment or due process for employees who appeal disciplinary actions (Pear 2005b). On September 7, 2005, the DHS announced that it would delay the implementation of new personnel rules by as much as a year (*Washington Post* 2005a), and in mid-November of 2005, the DHS filed an appeal to overturn the August 12, 2005, rulings.

On June 27, 2006, a federal appeals court upheld both rulings by Judge Collyer. NTEU president Colleen Kelly called the appeals court ruling "a sweeping legal victory," and she also noted that she hoped she could work with Michael Chertoff to "work out a system that can be supported and will allow employees to do their jobs" (Barr 2006b). But Kelly also suggested that she was not certain a deal could be reached between the unions and the administration. In September, the Office of the Solicitor General let the deadline for appealing the appellate court's decision pass. Judge Collyer has now given the DHS until July 17, 2007 to decide "whether it will revise personnel rules . . . start writing those rules from scratch, or abandon the defeated measure" (Losey 2006).

While the new personnel rules were losing ground in the courts, the DHS was also losing congressional financial support for the implementation of the new system. For fiscal year 2005, the administration had requested \$133.5 million for DHS human resources. This amount was cut to \$70 million by the House and

Senate appropriations committees and further cut to \$43.2 million in conference committee (Dizard 2004). For fiscal year 2007, the administration's request of \$71.5 million was cut by Congress to \$25 million, less than the \$29.7 million that Congress gave the system in fiscal year 2006 (Rutzick 2006).

Not only has the new DHS personnel system been stalled by action in the courts, but also the efforts by the administration to expand personnel management reform have been slowed. A legal challenge to the National Security Personnel System in the Department of Defense successfully thwarted the labor relations portions of that department's reforms. Consequently, the department has moved ahead with rules, including pay banding and pay for performance, only for employees who are not covered by collective bargaining agreements. Lastly, the Working for America Act, the administration's proposal for expanding personnel management reform throughout the federal government, has received little, if any, immediate support on Capitol Hill.

Enactment of the Homeland Security Act of 2002 was a significant legislative accomplishment in the early days of the Bush administration. But the implementation of those reforms has proven difficult, as the issues that were unresolved in the legislative phase reemerged as battles in the courts and in Congress.

Acknowledgments

Support for this research was provided by the U.S. Office of Personnel Management and the Center for Defense Management Reform at the Naval Postgraduate School. The authors are grateful for the research support provided by Lieutenant David W. Anderson, U.S. Navy, and Captain Joshua P. Bahr, U.S. Marine Corps, who worked on this research as part of their MBA project. The observations and conclusions contained herein are those of the authors.

References

- AFL-CIO. 2002. The Department of Homeland Security. Executive Council Resolution No. 6, August 6. www.aflcio.org/aboutus/thisistheafclio/ecouncil/ec0806b2002.cfm [accessed February 15, 2007].
- Barr, Stephen. 2005. Interview with authors, September 23.
- Barr, Stephen. 2006a. DHS Ruling Deals Administration a Setback. *Washington Post*, June 28.
- . 2006b. Homeland Security Department Ends Litigation on Workplace Rules. *Washington Post*, September 27.
- Baumgartner, Frank R., and Bryan D. Jones. 1993. *Agendas and Instability in American Politics*. Chicago: University of Chicago Press.
- Berenson, Bradford. 2005. Interview with authors, October 31.

- Burke, Kenneth. 1950. *A Rhetoric of Motives*. Berkeley: University of California Press.
- Bush, George. 2002. Remarks at Southwest Missouri State University in Springfield, Missouri, October 18. *Weekly Compilation of Presidential Documents* 38(42): 1797–1803.
- Conley, Richard S. 2002. The War on Terrorism and Homeland Security: Presidential and Congressional Challenges. Paper presented at the Conference Assessing the Presidency of George W. Bush at Midpoint: Political, Ethical, and Historical Considerations, November 22–23, Gulfport, MS.
- Dizard, Wilson P. 2004. Funding Cuts Slow DHS Personnel Systems. *Government Computer News*, October 28. www.gcn.com/cgi-bin/udt/im.display.printable?client.id=gcn_daily&story.id=27765 [accessed February 15, 2007].
- Falkenrath, Richard. 2005. Interview with authors, September 22.
- Gartland, John. 2005. Interview with authors, August 28.
- Gilman, Maureen. 2005. Interview with authors, September 22.
- James, Kay Cole. 2005. Interview with authors, September 23.
- Kelly, Colleen. 2005. Interview with author, September 22.
- Kingdon, John W. 1995. *Agendas, Alternatives, and Public Policies*. 2nd ed. Boston: Little, Brown.
- Lawlor, Bruce. 2005. Interview with authors, September 23.
- Losey, Stephen. 2006. Judge Sets Deadline for DHS Personnel System Corrections. *FederalTimes.com*, October 18. <http://federaltimes.com/index.php?S=2294801> [accessed February 15, 2007].
- Lowry, Rich. 2004. Max Cleland, Liberal Victim: Election Mythology. *National Review Online*, February 20. www.nationalreview.com/flashback/lowry200407291758.asp [accessed February 23, 2007].
- Moynihan, Donald. 2005. Homeland Security and the U.S. Public Management Policy Agenda. *Governance: An International Journal of Policy, Administration and Institutions* 18(2): 171–96.
- Moynihan, Donald, and Alastair Roberts. 2002. Public Service Reform and the Security Agenda. In *Governance and Public Security*, edited by Alasdair Roberts, 129–45. Syracuse, NY: Campbell Public Affairs Institute.
- Pear, Robert. 2005a. Four Unions Sue over New Rules for Homeland Security Workers. *New York Times*, January 28.
- . 2005b. Homeland Security Dept. Loses Fight on Labor Rules. *New York Times*, August 14.
- Portman, Rob. 2002. Homeland Security Legislation. PBS OnLine NewsHour, July 26. www.pbs.org/newshour/bb/congress/july-dec02/hsl_7-26.html [accessed February 15, 2007].
- Ridge, Tom. 2006. Interview with author, January 17.

- Rutzick, Karen. 2006. Congress Withholds Millions from DHS Personnel System. *GovExec.com*, Daily Briefing, October 2. www.govexec.com/dailyfed/1006/100206r1.htm [accessed February 15, 2007].
- Ryan, Richard W. 2003. The Department of Homeland Security Challenges the Federal Civil Service System: Personnel Lessons from a Department's Emergence. *Public Administration and Management* 8(3): 101–15.
- U.S. Office of Personnel Management (OPM). 2003. OPM's James Praises Accomplishments of DHS Personnel System Design Team. News release, October 3. www.opm.gov/pressrel/2003/oct03.asp [accessed February 15, 2007].
- U.S. General Accounting Office (GAO). 2003. Human Capital: DHS Personnel System Design Effort Provides for Collaboration and Employee Participation. Washington, DC: Government Printing Office. GAO-03-1099. www.gao.gov/new.items/d031099.pdf [accessed February 15, 2007].
- Washington Post*. 2005. Briefly: The Department of Homeland Security. September 8.
- Washington Post*. 2005. DHS and the Unions. November 15.
- U. S. House, Select Committee on Homeland Security. 2002. Transforming Government for the 21st Century: Summary of H.R. 5005. 107th Cong., 2nd sess., July 23.
- White House, Office of the Press Secretary. 2002. Department of Homeland Security Press Briefing, June 6. www.fas.org/irp/news/2002/06/wh060602.html [accessed February 23, 2007].
- Zeller, Shawn. 2005. DHS Personnel System Unveiled. *GovExec.Com*, Daily Briefing, January 26. www.govexec.com/dailyfed/0105/012605sz1.htm [accessed February 15, 2007].

Have you noticed?

PAR is Packed

...WITH MORE PAGES, MORE CONTENT, MORE TOPICS, MORE AUTHORS,
AND MORE PERSPECTIVES THAN EVER.

Support our work and your field by joining ASPA today.

Visit: www.aspanet.org

Copyright of *Public Administration Review* is the property of Blackwell Publishing Limited and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.